IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 369 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOKKUMAR AMRUTLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 369 of 2000

MR RJ GOSWAMI for Petitioner No. 1

MR PR ABICHANDANI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/10/2002

ORAL JUDGEMENT

The appellant came to be convicted by Sessions Judge, Mehsana for offences punishable under Sections 363, 366 and 376 of IPC, by judgement and order rendered

in Sessions Case No. 14 of 1999, on Feb. 18, 2000. The appellant was ordered to undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs. 1,000/for offence punishable under Section 363 of IPC. He was ordered to undergo rigorous imprisonment for a period of 3 years and to pay fine of Rs. 1,000/- for offence punishable under Section 366 of IPC. He was also ordered to undergo rigorous imprisonment for a period of 7 years and to pay fine of Rs. 2,000/- for offence punishable under Section 376 of IPC. He was ordered to undergo further imprisonment for a period of one month in the event of default in payment of fine. The sentences were ordered to run concurrently.

2. The facts of the case in brief are that as per the prosecution case, the appellant and one Sitaben Fataji Ramsangji Thakore kidnaped/abducted Ritaben, daughter of Balkar Singh Punjabi from her residence at village Gozaria of Mehsana Dist. It is the case of the prosecution that thereafter he took Rita to field and committed rape on her. It was the case of the prosecution that Sitaben Fatehsinh Thakore played a role in persuading prosecutrix Rita to have relation with the appellant. It is the case of the prosecution that after committing rape on the prosecutrix, the appellant took her from Gozaria to Vedhu in a truck for some distance and thereafter in a jeep. One Virsangji saw the couple and followed them and ultimately when the jeep car stopped, Virsingji came and took out Rita from the jeep car. After reaching home, the prosecutrix disclosed in detail as to what had happened. Relatives had also collected over there. A complaint was lodged by Ritaben before Vasai Police Station on 21st Sept. 1998, on the basis of which offence was registered and case investigated by the police. After examining the evidence collected by itself, the investigating agency came to a conclusion that there was sufficient evidence against the appellant and Sitaben Fatehsinh Thakore and therefore, a charge-sheet came to be filed in the Court of Judicial Magistrate First Class. Learned JMFC inturn committed the case to the Court of Sessions, as the offence was triable exclusively by a Court of Sessions and Sessions Case No. 14 of 1999 came to be registered.

3. Charge against the accused No.1 - appellant was framed at Ex.8 for offences punishable under Sections 363, 366 and 376. Against accused Sitaben Fatehsinh Thakore, charge under Sections 363, 366, 376 read with Section 114, alternatively with Section 107 of IPC was framed. Both the accused persons pleaded not guilty to the charge and claimed to be tried.

4. Considering the evidence led by the prosecution, learned Sessions Judge came to the conclusion that the prosecution could not prove charges against Sitaben Fatehsinh Thakore and recorded acquittal qua her. Learned Sessions Judge however, came to the conclusion that charges for offence punishable under Sections 363, 366 and 376 IPC were proved by the prosecution against the appellant and therefore, recorded conviction and passed sentence as stated above. Against the said judgement and order, present appeal is preferred.

5. Learned Advocate Mr. Goswami appearing for the appellant submitted that the whole case hangs on the question of age of the prosecutrix at the time of the offence. Mr. Goswami submitted that even according to the learned Sessions Judge, the prosecutrix appeared to be a consenting party, but the conviction is recorded because according to learned Sessions Judge, the prosecutrix was below 16 years of age and her consent would have no effect on commission of crime. Mr. Goswami submitted that the appellant would press only that question in this appeal.

6. Learned Advocate Mr. Goswami submitted that the evidence adduced by the prosecution to indicate the age of the prosecutrix is in form of extract of the general register of age maintained by the school where the prosecutrix was studying, and school leaving certificate of the prosecutrix issued by the Nagar Prathmik Sikshan Samiti, Ahmedabad supported by oral evidence of Dineshchandra Dahyabhai Patel, Ex.34, Principal of the School. Mr. Goswami submitted that it is true that the school register and the school leaving certificate indicate that the date of birth of the prosecutrix was July 30, 1985 and therefore on the date of the incident, the age of the prosecutrix would be 13 years one month and 17 days, but no authenticity can be tagged to this evidence, if the settled proposition of law is considered. According to Mr. Goswami, school register and school leaving certificate as proof of age cannot be attributed any evidentiary value, because by virtue of law births and deaths are required to be registered and therefore, there has to be a record of registration of birth, which would be primary evidence of the date of birth of a person. That evidence is not brought on record by the prosecution. Mr. Goswami submitted that besides this, there is evidence of mother of the prosecutrix, Babiben, at Ex. 26, but her verbal say about the age of the prosecutrix is not supported by any legally authenticated evidence. On the contrary,

according to Mr. Goswami, in cross-examination the details given by her about her marriage with Balkar Singh and the sequence of events thereafter are considered, it is apparent that she is not telling the truth. Mr. Goswami submitted therefore that there is total absence of evidence to indicate that the prosecutrix was below 16 years of age. Mr. Goswami submitted that the prosecution has not adduced any medical evidence about age of the prosecutrix. The possibility of the prosecutrix being more than 16 years of age cannot be ruled out. This aspect has not been considered by the trial Court. Learned Advocate Mr. Goswami placed reliance on following decisions:-

1. State of Gujarat Vs. Jivanlal Chhotalal Patel - 1985 GLH 388
2. State of Gujarat Vs. Babu alias Roni Manilal - 1987 (1) GLR 590
3. Birad Mal Singhvi Vs. Anand Purohit - AIR 1988 SC 1796.

7. The appeal is opposed to by learned Additional Public Prosecutor Mr. P.R. Abichandani. He also agrees with the contention of Mr. Goswami that the case hangs on the question regarding age of the prosecutrix. He submitted that the aspect of involvement of the appellant having intercourse with the prosecutrix stands established by deposition of the prosecutrix and supporting medical evidence as well as report of the FSL. The only question is regarding age of the prosecutrix.

8. Mr. Abichandani submitted that the deposition of the prosecutrix herself and deposition of her mother Babiben both categorically states that the age of the prosecutrix was twelve and a half years at the time of the incident. This aspect emerging from deposition of Babiben has remained unchallenged by the defence. Mr. Abichandani submitted further that if the medical case papers Ex. 21 and medical certificate are seen, they clearly reveal that the age of the prosecutrix at the time of the occurrence was 13 years. This part has also remained unchallenged. Mr. Abichandani submitted that unfortunately, ossification test could not be undertaken for want of electricity. Mr. Abichandani submitted that these medical case papers, medical certificate and depositions of the prosecutrix and her mother Babiben indicate that age of the prosecutrix was twelve and a half years. Besides this Mr. Abichandani submitted that there is extract of general register maintained by the school (Ex. 36), which indicates that the said entry was made on the basis of a guardian certificate when the girl

was admitted in Standard I to the school. Mr. Abichandani submitted that this is a register maintained by the school which is run by Nagar Shikshan Samiti, Ahmedabad in ordinary course of business. Mr. Abichandani submitted that around 8 to 9 years back nobody could have anticipated such event and therefore there is no reason to doubt the date of birth of the prosecutrix stated in this certificate. Mr. Abichandani submitted that the judgements rendered by this Court in cases of State of Gujarat Vs. Babu alias Roni Manilal as well as State of Gujarat Vs. Jivanlal Chhotalal Patel were in different set of facts when the evidence regarding first admission of the prosecutrix to the school was not adduced by the prosecution. Mr. Abichandani submitted that the said judgements were rendered in appeals by State against acquittal and therefore observations made therein regarding school leaving certificates would be in set of facts of that case and therefore cannot be applied to the facts of the present case. Mr. Abichandani has placed reliance on decision in Bhoop Ram Vs. State of U.P. (AIR 1989 (SC) 1329) and Umesh Chandra Vs. State of Rajasthan (AIR 1982 (SC) 1057) to support his contention. Mr. Abichandani also relied on decision of Delhi High Court in Kedar Nath Singh Vs. State (1995 Criminal Law Journal 4121) to support his contention that a certificate issued by a Government run school is admissible in evidence. Mr. Abichandani therefore submitted that the conclusion arrived at by the trial Court regarding age is well considered and proper and this Court may not interfere with the said judgement and order and the appeal may therefore be dismissed.

9. The record and proceedings are before this Court and is given a close scrutiny.

9.1 It would be appropriate to place on record at this stage that it was noticed that the accused was not put questions regarding the report of the FSL and Serologist and the incriminating conclusions thereof by the trial Court while questioning him under Section 313 of Cr.P.C. The accused was therefore kept present before this Court during the course of hearing and relevant questions were put to him in Gujarati vernacular by this Court and his answers recorded on 17.10.2002 by this Court in presence of his learned Advocate which is at Ex.68.

9.2 In order that the evidence on record and the contentions raised before this Court can be appreciated in proper perspective, certain facts need to be stated.

9.2.1 Prosecutrix Rita is the child born during the wedlock of Balkar Singh and Babiben. It transpires that they were married and were staying at Ahmedabad. Thereafter, Rita was born. She was admitted in the school at Ahmedabad. Somehow for some reasons, the spouses had a split and Babiben was required to leave the house of Balkar Singh and shift to Gozaria in Mehsana Dist. where she earned her livelihood by labour work. It appears that she was then living with one Rachhodlal Rathod with whom also she had some dispute and had lodged some criminal complaint in past. Around the time when the incident occurred, it transpires that Babiben and Rita were staying together at Gozaria.

9.3 It is true that the question of conviction or acquittal mainly depends on the age aspect of the prosecutrix, as rightly contended by both the sides, but still it would be appropriate if evidence on question of intercourse and consent or otherwise is examined briefly.

9.4 Prosecutrix Ritaben is examined at Ex.14. After putting certain questions, the trial Court was satisfied that the prosecutrix understood the seriousness of oath and therefore oath was administered on her. She says that she is 13 years of age. The incident had occurred about 11 months back when they were staying at Gozaria. She states that she does not remember her birth-date, but when the incident occurred she was twelve and a half years of age. She states that she had studied upto IVth standard and she was lastly studying at Ahmedabad in Municipal School No.4. She states that her father is a drunkard and mentally a little off the balance. She stays with her mother and brother.

9.5 She states that on the date of the incident, she was playing near the Railway station at around 10.00 AM with her brother and two/three other boys. She stays that accused No.1 beckoned her. He lured her of getting married and took her towards Charadu in one field. She states that there was standing crop of Jawar in the field. She states that he opened her trousers and did what ought not to have been done and when she states that she feels shy of saying as to what had happened and that she would write it her own, the Court gave her a paper and pencil. She described the act in her own words. That writing is Ex.15. Ex.15 states that after beckoning the accused lured her of marrying her after going to Bombay. She therefore accompanied him. He took her to the field towards Cheradu and committed rape on her. She states that her mouth was gagged with a handkerchief.

She describes the actual act by saying that her pant was opened, undergarment removed and thereafter rape was committed. She states that thereafter she was taken to Gozaria Chokdi wherefrom Virsinhji brought her back.

9.6 Going back to her deposition, she understands what is rape. She describes the actual act of penetration as rape. She states that she was wearing a jeans at the time of the incident, which was stained with blood. She had bleeding from vagina. She identified her cloth before the Court. She states that she was examined by a lady doctor and a male doctor. She states that she had given history to the doctor which was recorded by him as stated by her.

9.7 Ritaben was cross-examined at length and she admits that she knew appellant about two months prior to the incident and they used to meet each other and exchange letters. She denied the suggestion that they had gone to movies together. About certain omissions and suggestions put to her, she denied particularly regarding appellant beckoning her and her going to him. A detailed cross-examination is made on the question of actual inter-course to suggest that the incident may not have occurred in the manner in which it is stated by the prosecutrix unless she was a consenting party.

9.8 Babiben - mother of the prosecutrix is examined at Ex. 26. She states that when Rita came back, her clothes were blood stained. She identifies her cloth. She states that Rita did not initially say anything as to who was responsible for her condition. It is only after 2 or 3 days that she revealed name of the appellant and therefore they decided to lodge the complaint. She states that she was formerly staying at Maninagar where Rita was born.

9.9 The Doctor who examined the prosecutrix is examined at Ex.18. Dr. Bhogilal Keshavlal Patel says that he had examined the prosecutrix on 22nd Sept. 1998. In the history, Ritaben had stated that she had gone with Ashokkumar on Sept. 16, 1998 to the field; that they had an intercourse; the intercourse was once; that she had left at about 10 'O Clock and returned about 2'O Clock in the afternoon and thereafter they had not met.

9.10 Doctor Bhogilal Patel states that the patient had changed cloth and had taken a bath. There were no external injuries on body. The breasts were developed and there was presence of pubic hair and auxiliary hair. There were no stains, no injury and no swelling on vulva.

The hymen was ruptured (old), no recent tear, no swelling, no hematoma. Doctor stated that vagina admitted two fingers with slight pain, and no spermatozoa seen on vaginal smear. In the opinion of the Doctor the prosecutrix cannot be considered as most habitual to inter-course.

9.11 The FSL report is at Ex.56. The Serology Report is at Ex.57. If Exhibits 56 and 57 are read together, they clearly indicate that the semen of the accused was of "B" group, the pants worn by the prosecutrix carried stains of blood and semen of "B" and "O" specific group. Likewise, the underwear of the prosecutrix also carried stains of "B" and "O" specific group. The underwear of the accused had stains of semen of "B" group. The blood group of the prosecutrix is "O".

10. The above circumstances taken collectively would clearly indicate that there was an act of coitus between the appellant and the prosecutrix on the day of the incident. As a result of the said coitus, the clothes of the prosecutrix were stained with semen of the appellant and blood of the prosecutrix herself. She was not used to intercourse, but at the same the possibility of her being a consenting party cannot be ruled out for the reason that she has not sustained any external injury. Apart from this, she has stated before the doctor that she 'went' with the accused appellant to the field and there 'they had intercourse'. She does not say that she was raped over there or that it was against her will or forced intercourse. The possibility of her being a consenting party therefore cannot be ruled out.

11. Now, the question therefore that remains to be considered by this Court is whether her consent would make any difference so far as offence of rape is concerned and for that purpose, age of the prosecutrix would be a relevant factor.

12. As regards age, there is evidence of the prosecutrix who states in her deposition that when the incident occurred, she was twelve and a half years age. Her age is reported to be 13 years when the evidence was recorded. Apart from this, the mother of the prosecutrix Babiben in her deposition stated that at the time of the incident, Rita was twelve and a half years old. This aspect is not challenged during cross-examination.

13. There is evidence in form of the medical case paper Ex. 21 and medical certificate Ex. 23, which also indicates the age of the prosecutrix to be 13 years.

13.1 The above basis of evidence are more or less dependent on the verbal version that is given by the witnesses, namely Rita and her mother Babiben. The ossification test could not be performed on the prosecutrix for want of electricity.

13.2 So far as documentary evidence is concerned, the birth of the prosecutrix does not appear to have been registered as can be seen from the deposition of Babiben. She does not say so in clear terms, but she says that Rita was born at Ahmedabad while they were staying at Maninagar in the house of one Dherasariya Brahmin. She states that she had fallen ill at that time and therefore, she does not know whether Rita's birth was registered at Ghodasar Panchayat or not.

14. The Court has therefore to examine other evidence led by the prosecution in form of the general register maintained by the school where prosecutrix was studying and the school leaving certificate of the prosecutrix. The general register is produced at Ex. 36 through deposition of Dinesh D. Patel, Ex.34, who was the Principal of the school. He had brought the original register to the Court at the time when he deposed before the Court and states that in the register, date of birth of the prosecutrix is indicated to be July 30, 1985. He says that he is working in the school as Principal since 1996, prior to him Rubinaben was the Principal and from her he had taken the charge. He recognises the hand-writing of Rubinaben and says that Entry No. 4391 relating to Ritaben Balkar Singh Jat is in her hands. He says that in column No. 17, the remarks are entered into by him. According to him, the school can be said to be a Government school. It transpires from his deposition that the extract of the general register Ex. 36 was produced on record and exhibited by consent of parties. The witness also proves the school leaving certificate Ex.37. The witness states that the contents of the register and the certificate are correct. he states that Ex. 37 was issued by him to Babiben.

14.1 During cross-examination, he says that when a guardian brings his ward for admission, a form is required to be filled-in by the guardian. That form is meant for the school and is a permanent record. He says that he does not know who had brought Rita for being admitted to the school. He says that the guardian form contains details of name, address etc. of the guardian.

14.2 A scrutiny of Ex.36 - the copy of entry No. 4391

of the general register, indicates that Rita was admitted to school on June 27, 1991. Column No. 7 indicates that guardian Certificate No. 87 was the basis for the entries. The said entry indicates that date of birth of Rita was July 30, 1985. The last column indicates that the name of the prosecutrix Rita was removed because of continued absence. Ex. 37 is the school leaving certificate which also indicates that she was admitted to school on June 27, 1991, that her name is recorded at entry No. 4391 of the general register and that her date of birth is July 30, 1985.

14.3 It is contended that the guardian form is not produced by the prosecution, but it has to be noted that during cross-examination though several questions were put to the witness in this regard, the witness was not called upon to produce the same.

14.4 It has to be therefore seen that the entry in the general register Ex. 36 is produced on record and that entry was made in year 1991 in ordinary course of business of the school, which indicated that this was the first entry of the prosecutrix to the school, the entry was made on the basis of a guardian certificate No. 87 and therefore there is no reason to doubt the correctness of the entry regarding date of birth of the prosecutrix. Nobody could have anticipated this type of an incident at that stage while making such an entry. It is a record of the school maintained in ordinary course of business.

14.5 Differently put, the evidence of the school register, school leaving certificate and the Principal of the school supports the say of Babiben regarding age of the prosecutrix being less than 16 years in any eventuality. The say of Babiben that prosecutrix was aged twelve and a half years at the time of the incident has not been challenged during cross-examination. It was contended that the details given by Babiben in cross-examination regarding her marriage with Balkar Singh and birth of Rita do not coincide with the age of the prosecutrix as indicated by the date of birth in the school register. In paragraph 4, Babiben has stated that she was married with Balkar Singh about 18 - 19 years prior to her deposition. Rita was born after about 10-12 years of marriage and when she married, she was aged about 13-14 years. She stayed with her parents for about 2 years and went to the house of Balkar Singh thereafter, and after going to the house of Balkar Singh, she delivered Rita after 10-12 years. It was therefore contended that she is not telling the correct details about the past events. If she had married to Balkar

Singh about 18 - 19 years prior to her deposition and Rita was born after 10-12 years of marriage, Rita's age would be somewhere around 7/8 years, which infact is not and therefore she is not telling the truth. In fact, it is to be noted that the witness is uneducated and she is living in a deserted condition.

15. It was vehemently argued that Babiben cannot be relied because she denies to be knowing Ranchhodji Maganji with whom she was staying as wife after leaving Balkar Singh, which she had admitted in cross-examination at a later point of time. It is true that initially during cross-examination she denies to know Ranchodji Maganji but when confronted with a certified copy of the case paper from Mansa Court, she admits to have lodged the complaint and to have settled the dispute with Ranchhodji Maganji and that around 1996 she was staying with Ranchhodji Maganji. But this by itself may not be considered to falsify her deposition on the question of age of her child and the incident. Witnesses tend to exaggerate certain things or to add certain embroidery to their version out of fear of being disbelieved. Society is yet to accept a second marriage of a lady although she is thrown out by her first husband. May be that reason may have prompted her to deny her relationship with Ranchhodji Maganji at the first instance, but that by itself would not render her deposition unbelievable when the age aspect of the prosecutrix is supported by independent evidence in form of general register and school leaving certificate. Observations made by the Apex Court in State of U.P. Vs. Anil Singh (AIR 1988 SC 1998) in para 15 would be relevant in this regard.

16. It was vehemently argued by the learned Advocate for the appellant that the school leaving certificate cannot be considered as reliable evidence for age of the prosecutrix. Learned Advocate was justified in making this submission because in case of State of Gujarat Vs. Jivanlal Chhotalal, it was observed that school leaving certificate for the purpose of proving the age in a criminal trial is useless, but it has to be observed that in that case even as per the prosecutrix, her age was 17 years at the time of the incident. The school registers produced were not supported by original material as regards the date of birth. The school certificate produced before the Court was on the basis of a certificate issued by a previous school and on what basis the entry was made by the previous school was not on record and the Court therefore observed that school leaving certificate is useless. It also has to be observed that the Court was then dealing with an appeal

against acquittal.

17. Learned Advocate Mr. Goswami has then placed reliance on the decision in the case of State of Gujarat Vs. Babu alias Roni Manilal and submitted that as held therein, the school leaving certificate cannot be the conclusive proof of evidence. However, in that case itself the Division Bench has observed that "it would be safe to read such an evidence in the light of other evidence regarding age, such as the School Leaving Certificate, entry in the birth register of a Municipality or a Panchayat, or a vaccination certificate or some such other dependable evidence (Emphasis supplied). School Leaving Certificate is thus considered as one of reliable pieces of evidence of age. However, in facts of that case the school leaving certificate was not accepted as the evidence was got produced through a witness. According to that record, prosecutrix was born on 5.2.1971 and the entry was made in the school register on 11.6.1981. The father of the prosecutrix stated that the prosecutrix was born on 5.2.1971 and that he remembered the date because he had written it down in a small chhiti. Differently put, he would not have remembered the date of birth of the child if he had not written down that chhiti. The trial Court did not accept the evidence of the father and this Court in appeal against the acquittal did not disturb that finding. The school record was not accepted because it was not duly proved by the witness and the witness was merely a production witness whereas in the instant case, Principal of the school where Rita studied, has been examined and he has deposed in categorical terms. He recognises the hand-writing of the person who made the entry and that entry is made on the basis of a guardian certificate, as can be seen from Column 7 of that register. The judgement therefore will not help the appellant.

18. Reliance was placed on the case of Birad Mal Singhvi Vs. Anand Purohit (supra), wherein it was observed that an entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry referring to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. The apex Court was considering the question of an entry made in the school register of a secondary school certificate. In addition to these decisions, learned Counsel submitted that the High Courts of Allahabad, Bombay and Madras have considered the question of probative value of an entry regarding the date of birth

made in the scholar's register in school certificate in election cases. The Courts have consistently held that the date of birth mentioned in the scholar's register of secondary school certificate has no probative value unless either the parents are examined or the person on whose information the entry may have been made, is examined. This judgement therefore will not apply to the present case as this Court has before it, the general register (Not Scholar's Register) maintained by the school when entries are made at the time of the entry of the student in the school. In the present case that entry is made on the basis of a guardian certificate, which gives details including date of birth. The judgements cited by learned Counsel for the appellant therefore will not help the appellant.

19. Against the said judgements, certain judgements of the apex Court would be relevant to be discussed.

19.1 In Bhoop Ram Vs, State of U.P. reported in AIR 1989 SC 1329, the apex Court accepted a school leaving certificate to determine the age of the child as against medical certificate. That was a case under U.P. Children Act, 1952 and question was determination of age of the accused. The lower Court had accepted the medical certificate to come to a conclusion that the age of the accused was more than 16 years. The apex Court did not approve the approach of lower Court in not accepting the school certificate in absence of any material to throw doubt about the entries. In the instant case also there is no reason to doubt the entries made in the general register of the school. The entries are duly proved and the age of the prosecutrix is stated to be very near to the age that would emerge from the deposition by the mother and therefore, there is no reason to come to a specific conclusion that the prosecutrix was more than 16 years of age in which event only her consent would make a difference so far as case of rape is concerned.

19.2 In Mohd. Ikram Hussain Vs. The State of Uttar Pradesh and ors., reported in AIR 1964 SC 1625 also the apex Court accepted certified copies from the school register for determining the age of the girl, which was supported by affidavit of the father. In the instance case before this Court, the age of the prosecutrix as emerging from the school certificate is supported by deposition of Babiben, mother of the prosecutrix.

19.3 In Umesh Chandra Vs. State of Rajasthan, reported in AIR 1982 SC 1057, the apex Court observed as under while considering admission form to a school:

"The High Court seems to think that the admission forms as also the School's register (Ext.D-3) both of which were, according to the evidence, maintained in due course of business, were not admissible in evidence because they were not kept or made by any public officer. Under Section 35 of the Evidence Act, all that is necessary is that the document should be maintained regularly by a person whose duty it is to maintain the document and there is no legal requirement that the document should be maintained by a public officer only."

The apex Court also observed in paragraph 11 that "a perusal of the provisions of Section 35 would clearly reveal that there is no legal requirement that the public or other official book should be kept only by a public officer but all that is required is that it should be regularly kept in discharge of her official duty." The apex Court finding that the school where the documents were maintained was an English Public School, observed that the record maintained by it was undoubtedly unimpeachable and authentic and could not be suspected or presumed to be tampered with. At the time when the age of the appellant was first mentioned in the admission form, there was absolutely no dispute about the date of birth or for that matter the exact date on which he was born and there could not have been any motive on the part of the parents of the accused to give false date of birth because it was his first admission to a school at a very early age. Further, the school to which the appellant was admitted being a public School, enjoyed good reputation of authenticity. The apex Court accepted the school certificate in that case.

20. In the case before this Court also the school register is maintained in ordinary course of business. The school is run by Municipal Corporation undoubtedly. Entry was made about 8 years prior to the incident and there could have been no motive on part of parents of the prosecutrix to give a false date of birth, holding any stretch of imagination can it be said that the parents would have anticipated such an incident. No doubt is cast on the authenticity of the register except that the guardian certificate is not produced, but the witness has in terms stated that entries are made on the basis of the guardian statement and therefore there is no reason to doubt the school leaving certificate and the extract of the register.

Thus, in light of the above stated legal position as established by various judicial pronouncements Date of Birth as registered in the Register of Births and Deaths certainly has greater authenticity but where birth is not registered, reliance can be placed on School Leaving Certificate of Entry made in General Admission Register of a school. Entry in General Register of a school maintained regularly in ordinary course of its business cannot be doubted unless material is indicated to doubt its genuineness, trustfulness, reliability or to suspect it of any tampering.

21. The outcome is that prosecution has established the date of birth of the prosecutrix to be July 30, 1985. The date of incident is September 16, 1998 and therefore the age of the prosecutrix would be 13 years one month and 17 days precisely on the day of the incident. Resultantly, her consent would make no difference, she being below 16 years of age and the findings of the trial Court therefore, does not call for any interference.

22. So far as the other offences are concerned, as discussed above, the prosecutrix is a minor and her deposition clearly indicates that she went with the accused on his allurement of getting married and taking her to Bombay. The offence is therefore duly proved. The trial Court cannot be said to have committed any error in recording conviction of the accused.

23. This Court has considered the question on the quantum of punishment. The trial Court has inflicted minimum prescribed punishment. No special reasons appear for any interference in the quantum of punishment also. The appeal therefore must fail.

24. The appeal is dismissed. Judgement and order dated 18.2.2000 passed by the learned Sessions Judge, Mehsana in Sessions Case No. 14 of 1999 recording conviction is hereby confirmed. Bail bond is cancelled.

25. Learned Advocate Mr. Goswami seeks time of two months for surrendering to the custody, to enable the appellant to approach the apex Court. Considering peculiar facts and circumstances of the case, in the opinion of this Court, extension of bail cannot be favourably considered. The appellant shall surrender to the judicial custody forthwith.

(A.L.Dave, J.)

*/Mohandas